

Application No. : 10/707,733
Filed : January 8, 2004

REMARKS

Claims 36 – 58 were pending in the application. By this paper, Applicant has cancelled Claims 39 – 58 without prejudice, amended Claim 36, and added new Claims 59 – 78.

5 Accordingly, Claims 36 – 38 and 59 – 78 are presented for examination herein.

Restriction

1. Per page 2 of the Office Action, Claims 39 – 58 were alleged to be directed to an invention that is independent or distinct from the invention originally claimed. Accordingly, the
10 Examiner withdrew Claims 39 – 58 from consideration. Consistent with the Examiner's requirement for restriction, Applicant has herein cancelled Claims 39 – 58 without prejudice.

§101 Rejections

2. Per page 4 of the Office Action, Claims 36 – 38 each stand rejected under 35
15 U.S.C. §101 as being directed to non-statutory subject matter. Specifically, the Examiner alleges that Claim 36 is directed towards a series of steps that either: (1) should be tied to another statutory class; or (2) transform underlying subject matter. By this paper, Applicant has amended Claim 1 to tie specific steps recited to, *inter alia*, “a computer database” and “one or more computer servers”. Accordingly, Applicant submits that Claim 1 as amended comprises process
20 steps that are tied to a particular apparatus and therefore comprise statutory subject matter. **See e.g. In re Bilski, 88 USPQ2d 1385 (Fed. Cir. 2008).**

Applicant respectfully requests the withdrawal of the Examiner's rejection of Claims 36 – 38 as being directed to non-statutory subject matter in light of Applicant's amendments to Claim 36.

§103 Rejections

3. Per page 5 of the Office Action, Claims 36 – 38 each stand rejected under 35
U.S.C. §103 as being unpatentable over Moshal et al. (U.S. Patent Pub. No. 2001/0042041, hereinafter “Moshal”) in view of Ghouri et al. (U.S. Patent Pub. No. 2002/0082978, hereinafter
30 “Ghouri”). In response thereto, Applicant provides the following remarks:

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Claim 36 – By this paper, Applicant has amended Claim 36 so that it now recites in part the additional step of:

5 *“... providing an administrative monitoring application that communicates with said computer database in order to access information associated with said plurality of participating bidders as well as monitor the status of commissions associated with a completed hotel reservation.”*

10 Support for Applicant’s amendment can be found at paragraph [0031] of Applicant’s specification as filed. Accordingly, no new matter has been entered by virtue of this amendment.

15 Applicant submits that neither of Moshal or Ghouri teach or suggest such an administrative monitoring application as set forth above. While Ghouri does appear to teach administrative functions that update or delete old information; send reminders to users and dealers such as emails regarding auction closing times, acceptance or open bids; survey users and
20 dealers to gather information which may be helpful for fine-tuning the system of Ghouri; or for developing demographic statistics or for promotional/marketing purposes, Ghouri is wholly silent as to monitoring the status of commissions associated with a completed hotel reservation.

25 Applicant further notes that “[A] patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified. This is part of the ‘subject matter as a whole’ which should always be considered in determining the obviousness of an invention under 35 U.S.C. § 103.” *In re Spinnable*, 405 F.2d 578, 585 (CCPA 1969). {emphasis added}. See MPEP 2141.02. Neither Ghouri nor Moshal even remotely recognize the problem solved by Applicant’s amended Claim 36 (i.e., monitoring the status of commissions associated with a completed hotel reservation), and respectfully per MPEP
30 2141.02, the Examiner is obliged to consider this evidence of non-obviousness.

 Accordingly, Applicant respectfully submits that Claim 36 as amended distinguishes and is non-obvious over the teachings of the prior art, including Moshal and Ghouri, and is therefore in condition for allowance.

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New Claims

By this paper, Applicant has added new Claim 59 – 78. Support for these newly added Claims is replete throughout Applicant's specification as filed and accordingly, no new matter has been entered by virtue of these newly added claims.

5 In addition, each of these newly added claims are directed at methods for facilitating a hotel reservation, consistent with the Examiner's requirement for restriction above, and hence these new claims are properly examined herewith.

New Claims 59 – 65 are believed to be in condition for allowance based at least on their respective dependencies from Claim 36 as set forth above, while Claims 67 – 75 and 77 – 78 are
10 believed to be in condition for allowance based on their dependencies from independent Claim 66 and 76, respectively as well as the reasoning set forth below. Specific support for the newly added claims can be found as follows:

Claim 59 and 76 – 78 – Support for newly added Claims 59 and 76 – 78 can be found at
15 both Claim 36 as originally presented as well as at paragraphs [0026] and [0028] of Applicant's specification as filed. Applicant submits that Claim 76 distinguishes over the teachings of the prior art, including Moshal and Ghouri, in that the prior art fails to teach or suggest "*information that enables said potential buyer to determine whether or not a given one of said plurality of bids has been automatically submitted*" in combination with other elements present in independent
20 Claim 76.

Claims 60 – 62 – Support for Claims 60 – 62 can be found at paragraph [0026] of Applicant's specification as filed.

Claim 63 – Support for Claim 63 can be found at paragraph [0024] of Applicant's specification as filed.

25 **Claims 64** – Support for Claim 64 can be found at Fig. 1 and its accompanying disclosure of Applicant's specification as filed.

Claims 65, 66 and 75 – Support for Claims 65, 66 and 75 can be found Claim 36 as originally presented as well as at paragraph [0024] and Fig. 1 of Applicant's specification as filed. Applicant submits that Claim 66 distinguishes over the teachings of the prior art, including

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Moshal and Ghouri, in that the prior art fails to teach or suggest both "*a parent site and a private label site*" in combination with other elements present within independent Claim 66.

Claims 67 and 68 – Support for Claims 67 and 68 can be found at Fig. 3 (under heading "*Additional Features*") of Applicant's specification as filed.

5 **Claim 69** – Support for Claim 69 can be found at Fig. 2 (under heading "*Itinerary*") of Applicant's specification as filed.

Claim 70 and 72 – 74 – Support for Claims 70 and 72 – 74 can be found at paragraphs [0024] of Applicant's specification as filed.

10 **Claim 71** – Support for Claims 71 can be found at paragraphs [0026] – [0027] of Applicant's specification as filed.

Other Remarks

15 Applicant hereby specifically reserves all rights of appeal (including those under the Pre-Appeal Brief Pilot Program), as well as the right to prosecute claims of different scope in another continuation or divisional application.

20 Applicant notes that any claim cancellations or additions made herein are made solely for the purposes of more clearly and particularly describing and claiming the invention, and not for purposes of overcoming art or for patentability. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on such cancellations or additions.

Furthermore, any remarks made with respect to a given claim or claims are limited solely to such claim or claims.

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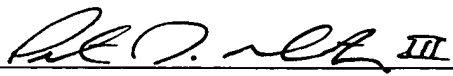
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If the Examiner has any questions or comments which may be resolved over the telephone, he is requested to call the undersigned at (858) 675-1670.

Respectfully submitted,

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